

Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, D.C. 20554

SEP 08 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

CELLCO PARTNERSHIP
d/b/a BELL ATLANTIC MOBILE

Petition for Designation as an
Eligible Telecommunications Carrier

) CC Docket No. 96-45
) FCC 97-419
)
)
)

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

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September 8, 1999

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TABLE OF CONTENTS

SUMMARY	2
CELLCO MEETS THE REQUIREMENTS FOR BEING DESIGNATED AS AN ETC IN DELAWARE AND MARYLAND	4
Service Areas Sought	5
Cellco is a Common Carrier	5
Cellco Provides Telephone Exchange Service and Exchange Access	5
Cellco Is Not Subject to Delaware and Maryland State Commission Jurisdiction	6
Cellco Offers All of the Services Supported by Universal Service Support Mechanisms	8
Cellco Will Offer Supported Services Through Its Own Facilities	12
Cellco Will Advertise the Availability of Its Offerings and Charges	12
CONCLUSION	13

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To: Chief, Common Carrier Bureau

**PETITION FOR DESIGNATION AS AN
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Cellco Partnership ("Cellco") d/b/a Bell Atlantic Mobile ("BAM"), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended ("Act"), and the Commission's Public Notice implementing Section 214(e)(6),¹ hereby petitions the Common Carrier Bureau to designate it as an eligible telecommunications carrier ("ETC") for service areas comprising all of Delaware and parts of Maryland.

¹ Public Notice, "Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act," FCC 97-419, 12 FCC Rcd 22497 (1997). In the Notice, the Commission delegated authority to the Common Carrier Bureau to designate carriers as ETCs. In accordance with the Notice, a certification that Cellco meets the criteria for ETC status and that it complies with the Anti-Drug Abuse Act is attached to this Petition.

SUMMARY

Cellco seeks ETC status not only to implement the principle in the 1996 Telecommunications Act that qualifying wireless carriers can and should be designated as ETCs, but also because Cellco believes it may be able to further the social goals underlying the universal service program. Both Delaware and Maryland are underrepresented in the benefits they receive from the federal universal service program. They receive little or no high cost support, given their compact size and population density; Cellco's participation in the universal service program would not change this. Both states also receive low amounts of federal Lifeline and LinkUp subsidies. Delaware received only about \$25,000 in total low income program benefits in 1998, an average of about 38¢ per low income resident for the year; Maryland received only about \$320,000, an average of about 67¢ per low income resident per year. By contrast, California low income residents receive subsidies that are considerably larger on a per person basis, more than \$50 per low income resident.²

² Universal Service Administrative Co., *Federal Universal Service Programs, Fund Size Projections and Contribution Base for the Third Quarter 1999*, App. 7, "Low Income Program Dollars Reported, Jan. - Dec. 1998, As of Mar. 31, 1999"; Census Bureau, Current Population Reports, Series P60-201, *Poverty in the United States: 1997*, table at ix, "Percent of People in Poverty by State: 1995, 1996, and 1997," www.census.gov/prod/3/98pubs/p60-201.pdf; Census Bureau, "ST-98-1, State Population Estimates and Demographic Components of Population Change: July 1, 1997 to July 1, 1998", www.census.gov/population/estimates/state/st-98-1.txt. These sources reveal the following estimates: Delaware 1997 population was 735,143 with 66,898 in poverty; Delaware received \$25,574 in low income program dollars in 1998, allowing an estimate of 38.2¢ on average per low income person; Maryland, 1997 population of 5,094,924, with 473,828 in poverty, received \$319,809 total in 1998, estimated average per low income person of 67¢; California, 1997 population of 32,182,118, with 5,406,596 in poverty, received \$274,628,538 in total low income support, averaging to estimated \$50.79 per low income resident.

Cellco believes it may be able to make a contribution to telephone service to poor people in these two states, by using the Lifeline and LinkUp subsidies to reduce the price of cellular service to qualifying low-income residents. Various Cellco offerings may be appropriate, but, as one example, Cellco's prepaid cellular product, MobileMinutes, would clearly benefit intended recipients of Lifeline and LinkUp support who are transient, cannot obtain credit, or do not have the means to receive and settle formal monthly billing statements. Prepaid cellular service is available with no long-term contract, no credit check, and no monthly bills, simply by purchasing a MobileMinutes card at a retail outlet.

For many years, neither Delaware nor Maryland has regulated cellular telephone companies. The state legislatures have specifically divested their respective state regulatory commissions of jurisdiction over cellular telephone service. Section 214(e)(6) is thus the only available vehicle to designate carriers as ETCs in those states, and it instructs the Commission to act on ETC petitions in precisely this situation. Cellco shows below that it meets all of the requirements in the Act and in the Commission's Rules for being designated as an ETC.

For these reasons, Cellco seeks designation as an ETC within the states of Delaware and Maryland. Prompt grant of this petition will enable Cellco to offer service to poor citizens of these states through wireless telecommunications, thereby helping to achieve the goals of the Act's universal service programs.

CELLCO MEETS THE REQUIREMENTS FOR BEING DESIGNATED AS AN ETC IN DELAWARE AND MARYLAND.

Section 214(e) establishes the procedure by which a common carrier is designated as an ETC in its requested service area. Generally, designation is made by the state commission. Section 214(e)(2). However, Section 214(e)(6), added to the Act in 1997,³ directs the FCC to designate carriers that are not subject to state jurisdiction as ETCs:

COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION. In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law.

Section 214(e)(6) applies because Cellco meets all of the requirements of that provision. Section 214(e)(6) also states that the Commission "shall" designate the petitioning carrier as an ETC as long as it meets the requirements of that section and Section 214(e)(1). Once the petitioning carrier shows that it meets those requirements, it is entitled to be an ETC. Designation is mandatory.⁴

³ Public Law 105-125, 111 Stat. 2540 (December 1, 1997).

⁴ Where the petitioning carrier's proposed service area is already served by a rural telephone company, Section 214(e)(6), like Section 214(e)(2), states that the FCC "may designate" the second carrier as an ETC, and if it finds that "the designation is in the public interest." The discretion granted the Commission and the need to make a public interest finding where there is an existing rural telephone carrier, however, do not apply here, because there is no rural telephone company in Delaware or in the service areas of Maryland for which Cellco seeks ETC status.

Service Areas Sought. Cellco provides cellular radiotelephone service to the entire state of Delaware as licensee of the Wilmington, Delaware MSA and the Delaware 1 – Kent RSA cellular markets. Cellco's cellular geographic service areas (“CGSAs”) in these markets completely cover the whole state.⁵ It thus requests that the entire state be designated as its service area for purpose of providing universal service. Cellco is also the licensee of the following three markets in Maryland: the Baltimore MSA (greater Baltimore), Maryland 2 RSA – Kent (the Maryland portion of the Delmarva peninsula), and Maryland 3 RSA – Frederick (central Maryland). Its CGSAs completely cover all three of these markets. It requests that these license areas be designated as its service area in Maryland.⁶

Cellco is a Common Carrier. Section 214(e)(6) entitles “common carriers” to apply for ETC status. Cellco is a “common carrier.” It holds licenses in the Domestic Public Cellular Radio Telecommunications Service, and Section 20.9(a) of the Commission’s Rules specifically provides that carriers offering this type of service are to be regulated as common carriers.⁷

Cellco Provides Telephone Exchange Service and Exchange Access.

⁵ Cellco has previously filed maps and other data with the Commission which document its complete 32 dB coverage of the two markets, in accordance with the Commission’s System Information Update procedures set forth in Section 22.947 of the Rules.

⁶ A carrier petitioning to be an ETC may request designation in a particular service area. Where there is a rural telephone carrier, the petitioning ETC must generally specify an area that encompasses the RTC’s “study area.” There are, however, no RTCs serving Delaware or the areas in Maryland which are the subject of this ETC petition.

⁷ “The following mobile services shall be treated as common carriage services and regulated as commercial mobile radio services: ... Domestic Public Cellular Radio Telecommunications Service.” 47 C.F.R. § 20.9(a).

The Commission has determined that the provision of cellular service constitutes the provision of telephone exchange and exchange access services. In its decision implementing Section 251 of the Act, it held, “We also agree with several commenters that many CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act.”⁸

Cellco Is Not Subject to Delaware and Maryland State Commission Jurisdiction. Section 214(e)(6) also applies because Cellco is not subject to the jurisdiction of the Delaware Public Service Commission or the Maryland Public Service Commission. The 1997 Public Notice requires that carriers seeking designation pursuant to this section supply a brief statement which demonstrates lack of state jurisdiction.⁹

Title 26 of the Delaware Code, entitled “Public Utilities,” grants to the PSC certain regulatory authority over any “public utility” that operates in the state.¹⁰ The term “public utility” however, is defined to exclude an entity providing

⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 at ¶ 1012 (1996) (subsequent history omitted).

⁹ The Public Notice also required the carrier to certify that it is not subject to the state commission’s jurisdiction and that it provide a copy of its petition to the state commission. The certification is attached. Cellco has informally confirmed with the professional staffs of the Maryland and Delaware commissions that these statutory exclusions are complete exclusions from the commissions’ jurisdiction. A copy of this Petition is being furnished to the two state commissions.

¹⁰ “The Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of this title.” 26 Del. Ann. Code § 201(a).

cellular telephone service.¹¹ Another provision of Delaware law confirms the PSC's lack of jurisdiction over cellular service:

The Commission shall have no jurisdiction over the operation of telephone service provided by cellular technology or by domestic public land mobile radio service or over the rates to be charged for such service or over property, property rights, equipment or facilities employed in such service.¹²

The Delaware PSC thus has no statutory authority to regulate Cellco. Because Cellco is "not subject to state commission jurisdiction" as set forth in Section 214(e)(6) of the Act, the FCC (rather than the Delaware PSC) must act on Cellco's petition for ETC status.¹³

In Maryland, the PSC "has jurisdiction over each public service company that engages in or operates a utility business in the State." Md. Ann. Code, Public Utility Companies Article, § 2-112. "Public service company" is defined in pertinent part to cover a "telephone company." Id. at § 1-101(p). The definition

¹¹ "Public utility" includes every individual, partnership, association ... that now operates or hereafter may operate, within this State, any steam, manufactured gas, natural gas, electric light, heat, power, water, telephone, excluding telephone service provided by cellular technology, or by domestic public land mobile radio service or heating oil (for residential consumption directly to residences by means of a pipeline) service, system, plant or equipment, for public use." 26 Del. Ann. Code § 102(2) (emphasis added).

¹² 26 Del. Code Ann. § 202(c) (emphasis added).

¹³ The Public Notice implementing Section 214(e)(6) states that the provision "was intended to correct an 'oversight' in the statute regarding certain carriers, such as tribally owned common carriers, that may fall outside the jurisdiction of a state commission." Notice at 2 n. 4 (emphasis added). The Commission thus recognized that there may be other types of carriers that would qualify for the Section 214(e)(6) process. In any event, Commission policy is to accept an ETC petitioner's certification (a certification Cellco makes here) that it is a common carrier not subject to the jurisdiction of a state commission, in the absence of evidence to the contrary. Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act, 13 FCC Rcd 22433 at ¶ 7 (CCB 1998).

of "telephone company" excludes Cellco: "'Telephone company' does not include a cellular telephone company." *Id.* at § 1-101(bb). Thus in Maryland, as in Delaware, Cellco "is not subject to the jurisdiction of a state commission." Section 214(e)(6).¹⁴

Cellco Offers All of the Services Supported by Universal Service Support Mechanisms. Section 214(e)(1) and the Commission's implementing rule, Section 54.201(d), both state that a common carrier designated as an ETC must "offer the services that are supported by Federal universal service support mechanisms under Section 254(c)." The Commission has defined those services that are supported by universal service mechanisms in Section 54.101(a). Cellco provides each of these services throughout the company's cellular service areas, which encompass Delaware and the Maryland markets described above. Its universal service offering will be provided over its existing cellular network infrastructure and spectrum.

1. Voice-grade access to the public switched network. Cellco currently provides voice-grade access to the public switched telephone network. It is able

¹⁴ Even if the state commissions possessed some residual authority over quality of service or terms and conditions, FCC action under Section 214(e)(6) would still be appropriate. The Wyoming commission so found in rejecting Western Wireless' petition for ETC status and remanding Western Wireless to the FCC. *In the Matter of the Amended Application of WWC Holding Co., Inc. (Western Wireless) for Authority to be Designated as an Eligible Telecommunications Carrier*, Public Service Commission of Wyoming, Docket No. 70042-TA-98-1, issued August 13, 1999. Furthermore, the preemption of state rate and entry regulation under Section 332(c) would itself supply a sufficient basis for concluding that state commissions do not possess jurisdiction sufficient to rule upon an ETC request from a CMRS carrier, because they lack jurisdiction to "regulate" rates or entry. See Federal-State Joint Board on Universal Service, Further Notice of Proposed Rulemaking, FCC 99-204, released September 3, 1999, ¶ 82.

to originate and terminate voice-grade telephone service for all of its subscribers through interconnection agreements with landline carriers.¹⁵

2. Local usage. Cellco offers service options that include varying amounts of local usage in monthly service plans. Subscribers who subscribe to those plans pay a flat fee and obtain a certain number of minutes for local usage without incurring an additional charge. For example, customers who purchase prepaid service under Cellco's MobileMinutes offering have a specified number of minutes of local usage at no additional charge. The Commission has not set any specified amount of minimum local usage.¹⁶ Cellco thus meets this requirement. Should, however, the Commission adopt additional rules in this regard, Cellco's universal service offerings will comply with those rules.

3. Dual tone multi-frequency signaling or its functional equivalent. Cellco, like other cellular carriers, uses in-band and out-of-band signaling in its cellular system. The Commission has held that signaling used by mobile carriers is functionally equivalent to DTMF signaling and thus meets this requirement.¹⁷

¹⁵ "Voice-grade access" means that the bandwidth for transmissions should be, at a minimum, 300 Hertz to 3,000 Hertz. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 ("Universal Service First Report"), at ¶ 64; Fourth Order on Reconsideration, 13 FCC Rcd 5318 (1997) at ¶ 16. Cellco's service meets this definition of voice-grade access.

¹⁶ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998) (seeking comment on defining "local usage").

¹⁷ Universal Service First Report at ¶ 71: "Wireless carriers use out-of-band digital signaling mechanisms for call set-up, rather than DTMF signaling. Consistent with the principle of competitive neutrality, we find it is appropriate to support out-of-band digital signaling mechanisms as an alternative to DTMF signaling."

4. Single-party service or its functional equivalent. Cellco offers the functional equivalent of single-party service by providing a dedicated message path for the duration of a subscriber's call.¹⁸

5. Access to emergency services. Cellco offers subscribers access to emergency service throughout its cellular service area by dialing "911." Although the Commission included access to Enhanced-911 services as well in its 1997 order delineating the components of universal service, it also recognized that wireless carriers were not yet required to provide Phase 1 E-911 capability (delivery of Automatic Number Information) or Phase 2 capability (delivery of Automatic Location Information). It thus stated that a wireless carrier would meet the "access to emergency services" element as long as it met the requirements for deployment of E-911 capabilities when they became effective.¹⁹ Under Section 20.18(f) of the Commission's E-911 rules, those requirements are not in effect for cellular carriers such as Cellco until the local Public Service Answering Point

¹⁸ Universal Service First Report at ¶ 62: "To the extent that wireless providers use spectrum shared among users to provide service, we find that wireless providers offer the equivalent of single-party service when they offer a dedicated message path for the length of a user's particular transmission."

¹⁹ Universal Service First Report at ¶ 90: "If the relevant locality has not implemented E911 service, otherwise eligible carriers that are covered by the Commission's Wireless E911 Decision cited above are not required to provide such access at this time to qualify for universal service support." This policy was codified in the universal service rules, which state that the universal service element of access to emergency services "includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems." 47 C.F.R. § 54.101(a)(5) (emphasis added).

(“PSAP”) requests one or both of those capabilities and until a cost-recovery mechanism is in place.

Cellco today has the capability to deliver Phase 1 E-911 capability to all customers in Delaware and Maryland. At this time, delivery of Phase 1 E-911 capability is awaiting either a request for delivery from the relevant PSAPs, or establishment of a cost recovery mechanism. Moreover, Phase 2 requirements do not take effect until October 1, 2001. Cellco thus meets this element. It will continue to work with the responsible state agencies in deploying both Phase 1 and Phase 2 E-911 services.

6. Access to operator services. This is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call.²⁰ Cellco currently offers subscribers such access throughout the service areas.

7. Access to interexchange services. An ETC must offer consumers access to interexchange service to make and receive interexchange calls. Cellco provides its subscribers with this ability.

8. Access to directory assistance. Cellco meets this requirement by providing subscribers throughout the service area with access to directory assistance by dialing “411.”

9. Toll limitation for qualifying low-income customers. An ETC must offer either “toll control” or “toll blocking” services to Lifeline subscribers at no

²⁰ Universal Service First Report at ¶ 75.

charge. Cellco complies with this requirement. The MobileMinutes prepaid cellular offering, which Cellco intends to offer to low income consumers, inherently provides toll limitation.²¹

Cellco Will Offer Supported Services Through Its Own Facilities.

Section 214(e)(1) states that a carrier must offer the services supported by universal service support mechanisms “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” Cellco is a facilities-based common carrier that provides services through its own facilities, and intends to use its own facilities for its universal service offerings.

Cellco Will Advertise the Availability of Its Offerings and Charges.

Section 214(e)(1)(B) of the Act and Section 54.201(d)(2) of the Rules require that an ETC “advertise the availability of such services and the charges therefor using media of general distribution.” In granting another Section 214(e)(6) petition, the Bureau accepted the petitioner’s brief statement that it planned to use “standard subscriber notifications” and would “advertise the availability and cost” of its offerings.²² The Bureau stated, “We expect that the petitioners will use advertising

²¹ Prepaid wireless services have been effective in foreign countries as a means of increasing penetration among underserved telephone users. The fact that service is purchased in advance of usage means that customers can limit the amount of both local and long distance calling to the amount of service previously paid for.

²² Designation of Fort Mojave Telecommunications, Inc., et al. as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, 13 FCC Rcd 4547 at ¶ 13 (CCB 1998).

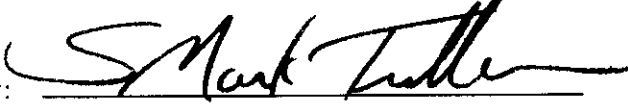
techniques designed to reach all of the residents of their services areas and will ensure that customers are aware of the availability of supported services and, in particular, the support available to low income consumers." Cellco commits to use such techniques. It currently advertises the availability of its services and charges using radio, television, newspapers, and other media of general distribution, and it intends to use the same types of advertising. Cellco will seek to reach all residents in the affected states to ensure they are aware of its offerings that may meet their telecommunications needs.

CONCLUSION

Cellco meets all of the requirements for being designated as an ETC. Because Delaware and Maryland have no jurisdiction over Cellco, the Commission is to make that designation. Cellco accordingly requests that it be granted ETC status to provide services supported by federal universal service support mechanisms in the entire state of Delaware and in the three Maryland license areas described above.

Respectfully submitted,

CELLCO PARTNERSHIP
d/b/a BELL ATLANTIC MOBILE

By: 

S. Mark Tuller
Bell Atlantic Mobile, Inc.
180 Washington Valley Road
Bedminster, NJ 07921
(908) 953-9497
Its Attorney

CERTIFICATION

I, S. Mark Tuller, hereby certify as follows:

1. I am Vice President-Legal and External Affairs, Secretary and General Counsel of Bell Atlantic Mobile, Inc. Cellco is the managing general partner of Cellco Partnership ("Cellco"). Cellco holds licenses to provide cellular radiotelephone service throughout Delaware and in the Baltimore MSA, Maryland-2 RSA, and Maryland-3 RSA in Maryland.

2. I make this certification in support of Cellco's Petition for Designation as an Eligible Telecommunications Carrier in a service area defined as the State of Delaware and the foregoing three Maryland markets. Cellco is seeking designation as an ETC under Section 214(e)(6) of the Communications Act of 1934, as amended, so that it can serve the universal service needs of consumers residing in Delaware and Maryland.

3. For the reasons set forth in detail in Cellco's Petition, Cellco meets the criteria for ETC designation under Section 214(e)(6). Specifically:

- (a) It is a common carrier for purposes of obtaining ETC designation.
- (b) It provides telephone exchange service and exchange access service.
- (c) It is not subject to the jurisdiction of the Delaware Public Service Commission or the Maryland Public Service Commission.
- (d) It offers within the designated service area all of the services designated for support by the Commission pursuant to Section 254(c).
- (e) It offers the supported services using its own facilities.
- (f) It advertises the availability of such services and the charges therefor using media of general distribution.

4. Neither Cellco nor any party to Cellco is subject to a denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

The foregoing is true to the best of my knowledge, information and belief.


S. MARK TULLER

September 7, 1999